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ABSTRACT

The controversial legal issue of disciplinary exclusion of special education students is summarized. Presented in question and answer format, the information digest addresses the following questions: Why is the disciplinary exclusion of special education students so controversial? When can a special education student be excluded from school for disciplinary reasons? Who is responsible for determining if the disciplinary action is a manifestation of the handicap? Do many school systems have disciplinary policies that specifically address the students with handicaps? What alternatives to disciplinary exclusion are available for special education students? Also provided is a bibliography of 13 additional resources. (DB)

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DIGEST #453

DISCIPLINARY EXCLUSION OF SPECIAL EDUCATION STUDENTS

Why is the disciplinary exclusion of special education students so controversial?

In 1975, the Supreme Court ruled that a student cannot be given a short-term suspension from school at the sole discretion of an individual school administrator (*Goss v. Lopez*, 1975). This provided the general student population with certain procedural safeguards in instances involving disciplinary exclusions.

Legal and educational difficulties surface when a handicapped student is involved in a disciplinary action. School administrators have to balance the mandates of P.L. 94-142, Goss requirements, and disciplinary policies established by the local school districts.

P.L. 94-142 does not specifically address the disciplinary exclusion of handicapped students. However, regulations defining free appropriate public education, least restrictive environment, individualized education program (IEP), procedural due process, change of placement, student placement during proceedings, and impartiality are relevant to handicapped students during disciplinary proceedings.

Various courts have responded in over 16 cases relevant to the issue of disciplining handicapped students. Legal action is necessary because school systems often have difficulty reaching a consensus as to the precise nature or extent of power of school officials during disciplinary hearings.

When can a special education student be excluded from school for disciplinary reasons?

To determine the circumstances under which children with handicaps may be excluded from school for disciplinary reasons, courts have ruled that a number of important factors must be considered:

- School districts must view a disruptive child with handicaps as a special education problem rather than a disciplinary problem.
- To the maximum extent possible, the child with handicaps must be retained and placed in the least restrictive environment.
- If a student is to be suspended for longer than 10 days, the IEP team must convene and determine whether the disciplinary infraction was a manifestation of the child's handicapping condition.
- If the IEP team determines that the disciplinary action is a manifestation of the handicap, the contents of the IEP must be reevaluated.
- If the infraction is not related to the handicap, the normal disciplinary procedures set forth by the school board shall be imposed on the student.

On January 20, 1988, the Supreme Court reaffirmed that an educational placement of a student with handicaps cannot be changed without exhausting due process proceedings outlined in P.L. 94-142 (Honig v. Doe, 1988). The court found that school officials may temporarily suspend a student with handicaps up to 10 days. Under this ruling, disciplinary exclusion for more than 10 days constitutes a change of placement under P.L. 94-142. After the initial 10-day period, the student must return to his/her placement and remain there during any due process hearing or court appeal.

The courts have provided school officials with a recourse, however. When parents of a truly dangerous youth refuse to permit any change in placement, school officials may use the 10-day suspension period to seek the assistance of the courts to remove the youth from school. According to the judges, court action can be sought if "maintaining the child in his/her current placement is substantially likely to result in injury to himself or others."

Who is responsible for determining if the disciplinary action is a manifestation of the handicap?

The literature and legal documents clearly and emphatically charge the IEP teams with the responsibility of determining if a causal link exists between a child's handicap and the disruptive behavior. Establishing a causal link has presented numerous dilemmas:

- The courts have recognized that improper placement can be responsible for disruptive behavior; thus the courts have placed the burden for determining the appropriateness of disciplinary exclusion on the same team that previously placed the student.
- Many, if not all, behaviors that a student displays can be interpreted by some assessment tool or diagnostician as a reflection of the handicap.
- It is doubtful whether the diagnostic skills of team members are so accurate and refined that such a link can be established beyond a reasonable doubt.
- A school's perceptions of parents may be a dominant factor in determining the link.
- The severity of the handicap can be a deciding factor in determining whether the behavior is a manifestation of the handicap.

Do many school systems have disciplinary policies that specifically address the students with handicaps?

Rossell & Peterson (1985) found that few school systems have disciplinary procedures which address the specific points included in most court decisions. If such policies and procedures follow court guidelines, many are not specific or

EC 202836

detailed enough to allow for consistent or effective implementation. Frequently, implementation of a disciplinary policy is hampered because:

- There is a lack of operating guidelines that consider the special education service delivery system or curricula at the local school level.
- The roles and responsibilities of personnel who implement the policy are often inconsistent and unclear.
- The IEP team attempts to comply with due process procedures by deliberating solely on the issue of whether the disciplinary infraction is a manifestation of the handicap, instead of making a concerted effort to reevaluate the student's program.
- There are limited personnel and a lack of program and placement options for students who are frequently involved in disciplinary infractions.
- The school's level of receptivity to parental input tends to be related more to parental knowledge about disciplinary hearings than to the parent's willingness to participate (Zantal-Wiener, 1986).

What alternatives to disciplinary exclusion are available for special education students?

Alternatives to disciplinary exclusion should be positive and proactive. Holt and Smith (1984) advocated that schools establish intervention programs that are "defined by the parameters of seriousness of offenses, persons needed to implement, time and resources required to implement, and the degree to which the intervention interferes with the ongoing education of the youngster involved" (p. 38). Complementing that strategy, Braaten (1982) proposed a model for prioritizing behaviors and the appropriateness and intensity of interventions. In each of the five priority levels, Braaten provided specific behavior descriptions and intervention strategies. Cobb, Wilson, Trout, and Courtney (1988) have developed prevention strategies to reduce the incidence of discipline problems among high school special education students. The program includes social skills training for the students and procedures designed to improve the coordination of psychological services and the timely implementation of intervention strategies by a multidisciplinary problem-solving team.

In-school suspension is another viable alternative because students can remain in a supervised structured setting, while segregated from the general school population. In-school suspension programs can also provide the student with relevant functional academic and social skills curricula. Excellent examples of such programs for special education students are described by Crawford (1984) and Center and McKittrick (1987).

Additional alternatives to disciplinary exclusion can be found in recent literature. Leone (1985) described several models that may prevent disciplinary problems with students with handicaps. Lichtenstein (1980) outlined alternatives for school districts to balance legal responsibilities with appropriate educational programming for special education students. Guetzloe and Wells (1984) presented the option of utilizing the IEP to document disciplinary procedures specifically designed for an individual student.

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